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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA  
SOUTHERN DIVISION

CENTER FOR BIOLOGICAL DIVERSITY;	)	Case No. _____
	)	
Plaintiffs,	)	<b>COMPLAINT FOR</b>
	)	<b>DECLARATORY AND</b>
v.	)	<b>INJUNCTIVE RELIEF</b>
	)	
UNITED STATES BUREAU OF LAND	)	
MANAGEMENT,	)	
	)	
Defendant.	)	
_____	)	

## INTRODUCTION

1  
2 1. Plaintiff Center for Biological Diversity (“the Center”) challenges the decisions of  
3 Defendant United States Bureau of Land Management (“BLM”) authorizing and allowing the  
4 Rhyolite Ridge and South Infill mineral exploration projects on federal lands in central Nevada.  
5 The two projects are located in the BLM’s Tonopah Planning Area, within Esmeralda County.  
6

7 2. The BLM’s regulations limit “Notice” operations to causing surface disturbance  
8 of 5 acres or less, and require a “Plan of Operations” for mineral exploration projects that exceed  
9 5 acres. 43 C.F.R. § 3809.21. The BLM’s regulations prohibit the segmentation of a project  
10 area through the filing of a series of Notices for the purpose of avoiding the filing of a Plan of  
11 Operations. 43 C.F.R. § 3809.21(b).  
12

13 3. On October 19, 2018, the BLM authorized two Notice operations within the  
14 Rhyolite Ridge Project Area: (1) the Rhyolite Ridge Exploration Project, which totals 4.98 acres,  
15 and (2) the South Infill Exploration Project, which totals 4.04 acres. These two projects were  
16 unlawfully segmented to keep each project under 5 acres and thereby avoid the requirement to  
17 file a Plan of Operations, in violation of the BLM’s regulations. 43 C.F.R. § 3809.21(b).  
18

19 4. If the mineral exploration within the Rhyolite Ridge Project Area was not  
20 unlawfully segmented into two separate projects, and a Plan of Operations prepared as required,  
21 the BLM would also have been required to prepare an Environmental Impact Statement, or at  
22 least an Environmental Assessment, to analyze the environmental impacts of the project pursuant  
23 to the National Environmental Policy Act (“NEPA”), 43 U.S.C. § 4332(C).  
24

25 5. Environmental review pursuant to NEPA is particularly important for this mineral  
26 exploration because it substantially threatens the world’s only population of Tiehm’s buckwheat  
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28

1 (*Eriogonum tiehmii*), a critically endangered plant that is found only within the Rhyolite Ridge  
2 Project Area.

3 6. In authorizing the two notices, the BLM has also not ensured, as the Federal Land  
4 Policy Management Act requires, that the exploration projects will not result in unnecessary or  
5 undue degradation. 43 U.S.C. § 1732(b); 43 C.F.R. § 3809.1(a);  
6

7 7. Implementation of this mineral exploration is currently ongoing at both sites  
8 within the Rhyolite Ridge Project Area. This implementation is causing significant irreparable  
9 harm to the critically endangered Tiehm's buckwheat population that is found only on these  
10 affected public lands BLM manages.

11 8. The Center seeks declaratory relief that the BLM violated the agency's own  
12 regulations, the Federal Land Policy and Management Act ("FLPMA"), and the National  
13 Environmental Policy Act ("NEPA") in approving and authorizing this mineral exploration. The  
14 Center also seeks injunctive relief to prohibit any further implementation of this mineral  
15 exploration unless and until the BLM demonstrates full compliance with the law.  
16

### 17 JURISDICTION AND VENUE

18 9. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action  
19 arises under the laws of the United States, including FLPMA, 43 U.S.C. §§1701, *et seq.*; NEPA,  
20 42 U.S.C. §§ 4331, *et seq.*; and the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551, *et*  
21 *seq.*  
22

23 10. Venue is proper pursuant to 28 U.S.C. § 1391(e) because Defendant BLM has  
24 offices in this judicial district, and a substantial part of the events or omissions giving rise to the  
25 claims in this Complaint occurred in this judicial district, and a substantial part of the property  
26 that is the subject of this case is situated in this judicial district.  
27  
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1           16.     The Center's members intend to continue to regularly use and enjoy the Tonopah  
2 Planning Area, including the lands within and near the Rhyolite Ridge Project Area, frequently  
3 and on an ongoing basis in the future, including this fall and winter. At least one member of the  
4 Center has a concrete and specific plan to go hiking and take photographs of the imperiled  
5 Tiehm's buckwheat within and near the Rhyolite Ridge Project Area in December, 2019.  
6

7           17.     The health, recreational, inspirational, religious, scientific, educational, and  
8 aesthetic interests and benefits of the Center and its members have been and will continue to be  
9 adversely affected and irreparably injured if BLM's ongoing violations of FLPMA and the APA  
10 continue. These are actual, concrete injuries caused by the BLM's violations of FLPMA and  
11 APA. The Center and its members' injuries will be redressed by the relief sought.  
12

13           18.     Defendant United States Bureau of Land Management ("BLM") is an agency  
14 within the United States Department of the Interior. The BLM and its officers are responsible  
15 for the lawful management of the federal lands within the Tonopah Planning Area.  
16

## 17                   **STATUTORY AND REGULATORY BACKGROUND**

### 18           **I.     Federal Land Policy and Management Act and BLM Regulations**

19           19.     FLPMA is the basic "organic act" for management of the BLM public lands. In  
20 managing the public lands, FLPMA requires the BLM to take any action necessary to prevent  
21 unnecessary or undue degradation of the lands. 43 U.S.C. § 1732(b).  
22

23           20.     The BLM has promulgated regulations intended to prevent unnecessary or undue  
24 degradation of public lands by operations authorized by the mining laws. 43 C.F.R. § 3809.1(a).  
25

26           21.     For regulatory purposes, BLM divided mining operations into three categories  
27 according to the size and location of the operations. 43 C.F.R. § 3809.10.  
28

1           22. Mineral exploration operations that will result in only negligible disturbance of  
2 federal lands, and do not involve the use of mechanized earth-moving equipment, truck-mounted  
3 drilling equipment, or explosives, are identified as “Casual” use operations. 43 C.F.R. § 3809.5.

4           23. “Notice” mineral exploration operations are those that will cause a cumulative  
5 surface disturbance of five acres or less. 43 C.F.R. § 3809.21. Prior to commencing notice  
6 mineral exploration operations, the operator must provide notice to the BLM that describes the  
7 proposed activities. 43 C.F.R. § 3809.301. Additionally, the notice must provide that  
8 reclamation of disturbed areas will be completed, and that measures will be taken to prevent  
9 unnecessary or undue degradation of the lands during operations. *Id.*

10           24. After BLM has received notice of a notice mineral exploration operation, the  
11 agency reviews the notice to see if it is complete. 43 C.F.R. § 3809.311(a). If the notice is  
12 incomplete, BLM will inform the operator in writing of the additional information that it must  
13 submit to BLM. 43 C.F.R. § 3809.311(b). If the operator cannot demonstrate that it will prevent  
14 unnecessary or undue degradation, it may not conduct the operations. 43 C.F.R. § 3809.311(c).

15           25. For mining or mineral exploration operations that will cause a cumulative surface  
16 disturbance of more than five acres, and for operations proposed in specifically designated areas  
17 of preservation, the operator must provide a “Plan of Operations,” that must be approved by the  
18 BLM. 43 C.F.R. § 3809.411. Prior to approving the Plan of Operations, BLM must prepare an  
19 Environmental Assessment or Environmental Impact Statement pursuant to NEPA. *Id.*; BLM  
20 Handbook H-3809-1, § 4.4.1.3.2 (NEPA Analysis); 42 U.S.C. § 4332(C).

21           26. Under FLPMA, BLM must develop land use plans for the public lands under its  
22 control, 43 U.S.C. § 1712, and all resource management decisions must be in accordance with  
23 those plans. *Id.* § 1732(a), 43 C.F.R. § 1610.5-3(a). *See Norton v. S. Utah Wilderness Alliance*,

1 542 U.S. 55, 69 (2004) (this requirement “prevent[s] BLM from taking actions inconsistent with  
2 the provisions of a land use plan”); *Ore. Natural Res. Council v. Brong*, 492 F.3d 1120, 1128  
3 (9th Cir. 2007) (holding BLM decision is “inconsistent with the [Land Use] Plan and,  
4 consequently, violate FLPMA”).

5  
6 27. If a proposed action is not consistent with the land use plan, BLM must either  
7 rescind the proposed action or amend the plan. See 43 C.F.R. §§ 1610.5-3, 1610.5-5.

8 28. Courts have applied this “consistency” requirement to mining plans of operations  
9 and required that plans of operations adhere to the mandatory requirements of governing land use  
10 plans. *Mineral Policy Center v. Norton*, 292 F.Supp.2d 30, 49 (D.D.C. 2003).

## 11 **II. National Environmental Policy Act**

12  
13 29. The National Environmental Policy Act (“NEPA”) requires federal agencies to  
14 prepare a detailed environmental impact statement (“EIS”) for major federal actions that may  
15 significantly impact the quality of the human environment. 42 U.S.C. § 4332(2)(C).

16 30. The Council on Environmental Quality (“CEQ”) has promulgated regulations  
17 implementing NEPA, which are binding on all federal agencies. 40 C.F.R. § 1507.1.

18  
19 31. NEPA is our basic national charter for protection of the environment. 40 C.F.R. §  
20 1500.1(a). The purpose of the NEPA is to ensure “that the agency, in reaching its decision,  
21 will have available, and will carefully consider, detailed information concerning significant  
22 environmental impacts; it also guarantees that the relevant information will be made available to  
23 the larger [public] audience that may also play a role in both the decisionmaking process and  
24 implementation of that decision.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332,  
25  
26  
27  
28

1 349 (1989). “NEPA procedures must insure that environmental information is available to  
2 public officials and citizens before decisions are made and before actions are taken.” 40 C.F.R. §  
3 1500.1(b).

4 32. As a preliminary step, an agency may prepare an Environmental Assessment to  
5 decide whether the environmental impacts of a proposed action are significant enough to warrant  
6 preparation of an Environmental Impact Statement. 40 C.F.R. § 1508.9.

7 33. An Environmental Impact Statement must be prepared if substantial questions are  
8 raised as to whether a project may cause significant degradation of some environmental factor.  
9  
10 *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998).

11 34. An agency cannot break a project into small component parts to avoid a  
12 “significance” determination and the requirement to prepare an Environmental Impact Statement.  
13 40 C.F.R. § 1508.27(b)(7).

14 35. Connected actions, cumulative actions, and similar actions must be considered  
15 together in a single NEPA document. 40 C.F.R. § 1508.25.

### 16 **III. Administrative Procedure Act**

17 36. Pursuant to the APA, a person suffering legal wrong because of agency action, or  
18 adversely affected or aggrieved by agency action within the meaning of a relevant statute, is  
19 entitled to judicial review thereof. 5 U.S.C. § 702.

20 37. Agency action made reviewable by statute and final agency actions for which  
21 there is no adequate remedy in court are subject to judicial review. 5 U.S.C. § 704.

22 38. The APA directs a court to compel agency action unlawfully withheld or  
23 unreasonably delayed; and to hold unlawful and set aside agency action found to be arbitrary,  
24  
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1 capricious, an abuse of discretion, or otherwise not in accordance with the law, or agency action  
2 that is undertaken without observance of procedure required by law. 5 U.S.C. § 706.

### 3 **FACTUAL ALLEGATIONS**

#### 4 **I. The Rhyolite Ridge Mining Project**

5 39. Ioneer is an Australian company with an office in Reno, Nevada, that is proposing  
6 the development of a hardrock lithium and boron open-pit mining operation on the west slope of  
7 the Silver Peak Range in Esmeralda County, Nevada, approximately 40 miles south-west of  
8 Tonopah. This project is known as the Rhyolite Ridge Mining Project.

9  
10 40. Ioneer holds unpatented mining claims for the Rhyolite Ridge Mining Project  
11 through its wholly-owned subsidiary Paradigm Minerals USA.

12  
13 41. The Rhyolite Ridge Mining Project is expected to produce 20,200 tons of lithium  
14 carbonate and 173,000 tons of boric acid each year during its 30-year operational life.

15 42. A pre-feasibility of the Rhyolite Ridge Mining Project was completed in October  
16 2018.

17  
18 43. The Rhyolite Ridge Mining Project is made up of two lithium-boron deposits, North  
19 Basin and South Basin, which are located 4 kilometers apart.

20 44. In March 2019, a draft “2019 Tiehm buckwheat survey plan” was prepared for  
21 Ioneer and submitted to the BLM Battle Mountain District Tonopah Field office. Based on  
22 information and belief, this draft plan pertains to the Rhyolite Ridge Mining Project, not to the  
23 two exploration projects described further below. The survey plan does not provide measures or  
24 direction for avoiding, mitigating, or minimizing harm to Tiehm’s buckwheat and/or the plants  
25 habitat. The survey plan proposes a novel, untested experiment to transplant ten soil plugs  
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1 containing this extremely rare plant species to evaluate the feasibility of successfully  
2 transplanting individuals that are within the planned areas of disturbance.

3 **II. The Rhyolite Ridge Exploration Project**

4 45. Within the Project Area of the Rhyolite Ridge Mining Project, Ioneer proposed to  
5 proceed with mineral exploration activities in a project identified as the Rhyolite Ridge  
6 Exploration Project.  
7

8 46. The BLM authorized operations for the Rhyolite Ridge Exploration Project on  
9 October 19, 2018.

10 47. The total surface disturbance for the Rhyolite Ridge Exploration Project is 4.98  
11 acres.  
12

13 48. The Rhyolite Ridge Exploration Project includes 11 “larger” constructed drill sites  
14 (100 feet long by 50 feet wide), five “smaller” constructed drill sites (82 feet long by 50 feet  
15 wide), two groundwater well sites, and 24 test pit excavations.

16 49. Sumps approximately 20 feet long by 10 feet wide by 6.75 feet deep will be  
17 excavated within the site disturbance to collect drill cuttings and manage waste fluids.  
18

19 50. The test pits will be excavated within working areas with the dimensions of 30 feet  
20 long by 30 feet wide.

21 51. Approximately 18,302 linear feet of overland travel routes will be utilized with a  
22 disturbance width of six feet.

23 52. Reclamation activities for the Rhyolite Ridge Exploration Project will likely be  
24 completed in the summer of 2021.  
25  
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1 **III. The South Infill Exploration Project**

2 53. Within the Project Area of the Rhyolite Ridge Mining Project, Ioneer also proposed  
3 to proceed with mineral exploration activities in a project identified as the South Infill  
4 Exploration Project.

5 54. The BLM authorized operations for the South Infill Exploration Project on October  
6 19, 2018.

7 55. The total surface disturbance for the South Infill Exploration Project is 4.04 acres.

8 56. The South Infill Exploration Project includes up to 20 constructed drill sites, with  
9 up to two drill holes drilled at any given site; approximately 2,275 linear feet of new road  
10 construction; sumps that are 20 feet by 10 feet, and 6.75 feet deep, to collect drill cuttings and  
11 manage waste fluids; and one water bladder laydown area that is 61 feet long by 50 feet wide.  
12

13 57. Ioneer anticipated that mineral exploration activities would commence as early as  
14 February 2019, and that reclamation activities would likely be completed in the summer of 2020.  
15

16 58. The BLM has developed “Biological Resource Conditions” for one specific “bulk  
17 material excavation” within the South Infill Exploration Project. These conditions are unlikely  
18 to prevent significant disturbance to the Tiehm’s buckwheat if this excavation occurs.  
19

20 **IV. Tiehm’s Buckwheat**

21 59. Tiehm’s buckwheat is an extremely rare plant species in the buckwheat family that  
22 is found only in an isolated location in the Rhyolite Ridge area of the Silver Peak Range  
23 mountains of central Nevada.  
24

25 60. The Tiehm’s buckwheat occupies approximately 21 acres of habitat spread across a  
26 three-square mile area.  
27  
28

1           61. There is only one population of Tiehm's buckwheat, consisting of 6 sub-  
2 populations, and totaling from 20,000 to 43,000 individual plants.

3           62. Extensive surveys have not found any additional populations of Tiehm's  
4 buckwheat.

5           63. The entire population of Tiehm's buckwheat, and all of its habitat, are located  
6 within the Project Area of the Rhyolite Ridge Mining Project.

7           64. The BLM has designated the Tiehm's buckwheat as a Sensitive Species. BLM,  
8 Nevada Sensitive and Status Species List, 40 (2017).

9           65. The 1994 Tonopah Resource Management Plan and Final Environmental Impact  
10 Statement ("1994 RMP") defines Sensitive Species as "[p]lant and animal species occurring on  
11 public lands and requiring special management attention in order to protect them and in order to  
12 prevent irreparable damage to the important resources or other natural systems or processes on  
13 which it depends." U.S. Dep't of Interior, BLM Battle Mountain District, Tonopah Resource  
14 Mgmt. Plan and Final Env't'l Impact Statement, Glossary 1-2 (1994).

15           66. The BLM's Record of Decision ("ROD") that implemented the 1994 RMP states  
16 BLM is to "[p]rotect, restore, enhance, or expand habitat for threatened, endangered, or Nevada  
17 BLM Sensitive Species" and that there are to be "no incompatible land uses." U.S. Dep't of  
18 Interior, BLM Battle Mountain District, Tonopah Resource Mgmt. Plan Record of Decision, 1  
19 (1997). "Habitat for all . . . Nevada BLM Sensitive Species (plant and animal) will be managed  
20 to maintain or increase current populations of these species. . . . BLM policy is to provide  
21 sensitive species with the same level of protection as is provided for candidate species . . ."  
22 ROD at 9-10. The ROD also established that "[i]t is BLM policy to . . . ensure that actions  
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1 authorized or funded do not contribute to the need to list any of these species as threatened or  
 2 endangered.” ROD at 28.

3 67. As part of its duties to prevent unnecessary or undue degradation and irreparable  
 4 harm to public land resources under FLPMA, BLM has established a national policy to protect  
 5 designated Sensitive Species. The policy provides guidance for the conservation of Sensitive  
 6 Species and the ecosystems upon which they depend on BLM-administered lands. U.S. Dep’t of  
 7 the Interior BLM, Special Status Species Mgmt. Manual 6840, at 3 (2008) (“Special Status  
 8 Species Manual”).  
 9

10 68. The objectives of the BLM special status species policy are:

11 A. To conserve and/or recover ESA-listed species and the ecosystems on  
 12 which they depend so that ESA protections are no longer needed for these  
 13 species.

14 B. To initiate proactive conservation measures that reduce or eliminate threats  
 15 to Bureau sensitive species to minimize the likelihood of and need for listing  
 16 of these species under the ESA.

Special Status Species Manual 6840, at 3.

17 69. BLM has specifically acknowledged its duty to safeguard the public’s interest in  
 18 protecting Sensitive Species:

19 It is in the interest of the BLM to undertake conservation actions for such  
 20 species before listing is warranted. It is also in the interest of the public for  
 21 the BLM to undertake conservation actions to improve status of Sensitive  
 22 Species so sensitive recognition is no longer warranted. By doing so, BLM  
 23 will have greater flexibility in managing public lands to accomplish native  
 24 species conservation objectives and other legal mandates.

25 . . .

26 In compliance with existing laws, including the BLM multiple use mission as  
 27 specified in the FLPMA, the BLM shall designate Bureau sensitive species  
 28 and implement measures to conserve these species and their habitats,  
 including ESA proposed critical habitat, to promote their conservation and  
 reduce the likelihood and need for such species to be listed pursuant to the  
 ESA.

Special Status Species Manual at 36.

1           70. In approving the exploration projects, BLM failed to meet these requirements and  
2 as such, failed to meet the protective requirements of FLPMA.

3           71. On June 1, 2019, Center staff visited the Rhyolite Ridge Project Area, and observed  
4 Tiehm's buckwheat in full bloom, surveying all six populations with a noted desert botanist.  
5 Center staff observed impacts from mineral exploration activities including road-building and  
6 well pad grading, within meta-populations of the buckwheat. While the activity appeared recent,  
7 there was no evidence of ongoing activity nor equipment or personnel present.

8           72. On June 10, 2019, Center staff visited the BLM's Tonopah field office and became  
9 concerned about the authorized mineral exploration activities within Tiehm's buckwheat habitat  
10 after examining notices. At that time, however, there was no indication of current or ongoing  
11 activities, and BLM staff were unable to elaborate as to whether further activities were going to  
12 occur.

13           73. On June 12, 2019, as required by regulations implementing the Endangered Species  
14 Act, *see* 50 C.F.R. § 424.14(b), the Center provided formal 30-day notice to the State of Nevada  
15 that the Center intended to file a petition to designate as endangered and designate critical habitat  
16 for Tiehm's buckwheat. The notice, copies of which were also sent to BLM and the U.S. Fish  
17 and Wildlife Service, explained that Tiehm's buckwheat is an extremely rare plant with a highly  
18 restricted habitat in the Silver Peak Range of Esmerelda County, Nevada, and under threat by  
19 mineral exploration activities and a proposed mining project. The Center urged the state, BLM,  
20 and the U.S. Fish and Wildlife Service to work together to cease all exploration activities within  
21 or adjacent to Tiehm's buckwheat habitat until proper environmental review could be conducted  
22 and the petition could be evaluated.  
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1           74. On August 29, 2019, Center staff again visited the Rhyolite Ridge Project Area and  
2 noted no further activity since the June 1<sup>st</sup> visit.

3           75. On October 7, 2019, having received no response to its June 12, 2019 letter, the  
4 Center submitted a petition to the U.S. Fish and Wildlife Service, requesting that Tiehm's  
5 buckwheat be designated as an endangered species under the Endangered Species Act. The  
6 Center requested that its petition be considered on an emergency basis due to the dire threat  
7 posed by the exploration activities and proposed Rhyolite Ridge Mining Project.  
8

9           76. On October 27, 2019, Center staff again visited the Rhyolite Ridge Project Area  
10 and discovered a substantial increase in ongoing mineral exploration activities. Center staff  
11 observed trucks, heavy equipment, and personnel on-site, and that substantial excavation and  
12 grading had been conducted for new roads and exploration activities, with pipeline laid, wells  
13 pumped, wastewater pits filled, and other evidence of substantial exploration activities ongoing  
14 in the immediate area of Tiehm's buckwheat.  
15

16           77. On October 29, 2019, the Center sent a letter to the BLM notifying the agency of  
17 these ongoing activities, and requesting that the BLM immediately instruct Ioneer to cease and  
18 desist exploration activities in the area until the U.S. Fish and Wildlife Service reviews the  
19 Center's petition to list the Tiehm's buckwheat under the Endangered Species Act, and the BLM  
20 prepares a NEPA analysis of the exploration activities.  
21

## 22                           **CLAIMS FOR RELIEF**

### 23                           **FIRST CLAIM FOR RELIEF**

#### 24                           **BLM Violated FLPMA and the BLM's Regulations**

25           78. The Center hereby incorporates by reference all preceding paragraphs.  
26  
27  
28

1           79.     The BLM's regulations limit "Notice" level mining operations to five acres or  
2 less. 43 C.F.R. § 3809.21(a). For operations five acres or greater, BLM requires a Plan of  
3 Operations, which triggers the need for an Environmental Assessment or Environmental Impact  
4 Statement under NEPA. 43 C.F.R. § 3809.411; BLM Handbook H-3809-1, § 4.4.1.3.2 (NEPA  
5 Analysis); 42 U.S.C. § 4332(C).

6  
7           80.     The BLM's regulations explicitly forbid segmenting a project area by filing a  
8 series of notices for the purpose of avoiding filing a Plan of Operations. 43 C.F.R. § 3809.21(b).

9           81.     The Rhyolite Ridge Exploration Project and the South Infill Exploration Project  
10 are both located within the Project Area for the proposed Rhyolite Ridge Mine Project.

11           82.     The Rhyolite Ridge Exploration Project and the South Infill Exploration Project  
12 were both proposed by Ioneer, which is also the same mining company that proposes the  
13 Rhyolite Ridge Mine Project.

14           83.     The Rhyolite Ridge Exploration Project and the South Infill Exploration Project  
15 are each individually just under the 5-acre limit, with one 4.98 acres in size.

16  
17           84.     If the Rhyolite Ridge Exploration Project and the South Infill Exploration Project  
18 were considered together, they would easily exceed the five-acre limit and require a mine Plan of  
19 Operations, and NEPA review.

20  
21           85.     The BLM approved and authorized the Rhyolite Ridge Exploration Project and  
22 the South Infill Exploration Project on the very same day.

23           86.     The BLM violated its own regulations in segmenting and allowing the  
24 segmentation of the Rhyolite Ridge Project Area into two Notice mine operations, the Rhyolite  
25 Ridge Exploration Project and the South Infill Exploration Project, which cumulatively will  
26 impact well over five acres. 43 C.F.R. § 3809.21(b).



1           87. In violating 43 C.F.R. § 3809.21(b) in approving and authorizing the Rhyolite  
 2 Ridge Exploration Project and the South Infill Exploration Project, the BLM failed to take action  
 3 necessary to prevent unnecessary or undue degradation of the lands, in violation of FLPMA. 43  
 4 U.S.C. § 1732(b); 43 C.F.R. § 3809.1.

5           88. The BLM's approval and authorization of the Rhyolite Ridge Exploration Project  
 6 and the South Infill Exploration Project was arbitrary, capricious, an abuse of discretion, not in  
 7 accordance with law, and without observance of procedure required by law. 5 U.S.C. § 706(2).  
 8 The court should therefore hold unlawful and set aside BLM's approval and authorization of  
 9 these two projects. *Id.*

## 11                                   **SECOND CLAIM FOR RELIEF**

### 12                                   BLM Violated NEPA and the CEQ's NEPA Regulations

13           89. The Center hereby incorporates by reference all preceding paragraphs.

14           90. Under the CEQ NEPA regulations, an agency cannot break a project into small  
 15 component parts to avoid a "significance" determination and the requirement to prepare an  
 16 Environmental Impact Statement. 40 C.F.R. § 1508.27(b)(7).  
 17

18           91. Additionally, connected actions, cumulative actions, and similar actions must be  
 19 considered together in a single NEPA document. 40 C.F.R. § 1508.25.  
 20

21           92. In allowing and authorizing the proposed mineral exploration within the Rhyolite  
 22 Ridge Project Area to be segmented into the Rhyolite Ridge Exploration Project and the South  
 23 Infill Exploration Project, the BLM violated NEPA. 40 C.F.R. § 1508.27(b)(7); 40 C.F.R. §  
 24 1508.25.  
 25

26           93. The BLM's approval and authorization of the Rhyolite Ridge Exploration Project  
 27 and the South Infill Exploration Project was arbitrary, capricious, an abuse of discretion, not in  
 28

1 accordance with law, and without observance of procedure required by law. 5 U.S.C. § 706(2).  
 2 The court should therefore hold unlawful and set aside BLM's approval and authorization of  
 3 these two projects. *Id.*

### 4 **THIRD CLAIM FOR RELIEF**

#### 5 BLM Violated FLPMA

6  
 7 94. The Center hereby incorporates by reference all preceding paragraphs.

8 95. Under FLPMA, the BLM in managing public lands "shall . . . take any action  
 9 necessary to prevent unnecessary or undue degradation of the lands." 43 U.S.C. § 1732(b).

10 96. As part of BLM's duty to prevent unnecessary or undue degradation, BLM  
 11 established a national policy to protect designated sensitive species. U.S. Dep't of the Interior  
 12 BLM, Special Status Species Mgmt. Manual 6840 at 3 (2008) ("Special Status Species  
 13 Manual"). The Tonopah RMP and ROD also require that all sensitive species are managed as if  
 14 they are candidate species, which requires the BLM, among other things, to "ensure that actions  
 15 authorized or funded do not contribute to the need to list any of these species as threatened or  
 16 endangered." ROD 9-10, 28.

17  
 18 97. In approving and authorizing the Rhyolite Ridge Exploration Project and the  
 19 South Infill Exploration Project in the only Tiehm's buckwheat population known in the world,  
 20 BLM did not ensure that the projects would not result in unnecessary or undue degradation to the  
 21 Tiehm's buckwheat, in violation of FLPMA. 43 U.S.C. § 1732(b).

22  
 23 98. All site-specific resource management decisions must be in accordance with the  
 24 applicable RMP. 43 U.S.C. § 1732(a); 43 C.F.R. § 1610.5-3(a). The BLM's approval and  
 25 authorization of the Rhyolite Ridge Exploration Project and the South Infill Exploration Project  
 26 is inconsistent with the RMP's requirements for sensitive species, in violation of FLPMA. *Id.*  
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